IN THE
SUPREME COURT OF MISSOURI

State ex. rel D.C., Relator	)	
v.	)	No. SC85555
The Honorable Maura McShane, Judge, Twenty-First Judicial Circuit, Respondent	)	

ORIGINAL PETITION FOR WRIT OF PROHIBITION IN THE MISSOURI SUPREME COURT
FROM THE JUVENILE DIVISION OF THE CIRCUIT COURT OF THE TWENTY-FIRST JUDICIAL CIRCUIT
THE HONORABLE MAURA McSHANE, JUDGE

RESPONDENT'S BRIEF

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JURISDICTIONAL STATEMENT

Respondent adopts Relator's jurisdictional statement.

STATEMENT OF FACTS

Respondent adopts Relator's statement of facts with the following additions and corrections.

Relator is a juvenile, born March 8, 1986, who comes within the jurisdiction of the St. Louis County Family Court because he is alleged to have committed the class A felony of robbery in the first degree with a handgun, the class A felony of assault in the first degree with a handgun, the class B felony of robbery in the second degree and the class C felony of stealing a motor vehicle (A-1 through A-7, A-11 through A-12). All of the aforementioned allegations and the Motion to Dismiss Petition to Allow Prosecution of the Juvenile Under General Law (hereinafter referred to as "certification") have been filed by the Juvenile Officer of St. Louis County, not the State of Missouri.

The juvenile has been confined in the St. Louis County Family Court Detention Center continuously since December 25, 2002, while the certification and competency issues have been pending.

The juvenile's attorney selected psychologist Dr. Jeffries Caul to conduct a competency evaluation of the juvenile; following receipt of his written report, the Juvenile Officer requested and obtained an order for another psychological evaluation of the juvenile pursuant to Section 211.161, RSMo. Dr. Margo Layton, Ph. D., a psychologist employed by the St. Louis County Family Court, who had conducted a psychological, but not a competency, evaluation of the juvenile in February 2003, re-interviewed and re-examined the juvenile for competency purposes in July 2003.

Both Dr. Caul and Dr. Layton testified as witnesses for the juvenile in the competency portion of the certification hearing on July 17, 2003. The Juvenile Officer's only witness was Deputy Juvenile Officer Helena O'Reilly.

There was no dispute about the juvenile's educational background or previous history with the juvenile justice system in the City of St. Louis. The uncontroverted evidence presented at the competency hearing showed that the juvenile was in the ninth grade at Beaumont High School (A-26 and Tr. 52, A-28 and Tr. 60, A-40 and Tr. 107) before he was twice committed to the Division of Youth Services by the St. Louis City Family Court for five separate law violations (A-28 and Tr. 57, A-54). In November, 2002, the

juvenile absconded from the Division of Youth Services facility and was gone for approximately a month (A-28 and Tr. 58).

Part of the evaluation process by both Dr. Caul and Dr. Layton involved asking the juvenile about his personal history. Their testimony and reports credit the juvenile with knowing that he was the fifth of five children born to his mother (A-29 and Tr. 61, A-61), that his father is deceased (A-61), that he had been in a serious car accident when he was twelve or thirteen years old (A-29 and Tr. 61, A-61), that he had had ongoing feelings of depression (A-39 and Tr. 101), that he had tried to hang himself and had been stopped by his brother (A-39 and Tr. 101), that he had seen a doctor and was placed on Ritalin (A-39 and Tr. 101) and that the Ritalin had helped him to concentrate and feel better (A-39 and Tr. 101). Dr. Layton agreed that the historical information she elicited from the juvenile showed that his "speech was coherent and his thought process was logical" (A-38 and Tr. 100).

The juvenile had been in detention for almost 7 months prior to the hearing in July. While both psychologists agreed that detention is a highly structured program in which residents must follow rules, only Dr. Layton was familiar with the operation of the detention center at the St. Louis County Family Court. She testified that the juvenile's six minor rule

violations in almost 7 months in detention showed that "he does have a fairly good understanding of the rules" (A-41 and Tr. 109) and that he had also understood the testing directions she gave him in the psychological evaluation because he followed those directions (A-39 and Tr. 103).

Dr. Caul testified that the juvenile was able to read only a few isolated words and was unable to recognize or write most letters (A- 24-25 and Tr. 41-45, 47), placing him in the profoundly retarded range (A-24 and Tr. 41). According to Dr. Caul, the juvenile was unable even to recognize the letter "C" and instead, pointed out an "A" when asked to identify a "C" (A-24 and Tr. 44). The juvenile was, however, able to write his name when asked to do so by Dr. Caul (A-31 and Tr. 69); the juvenile's last name begins with the letter "C"!

When Deputy Juvenile Officer Helena O'Reilly took the stand, she testified that the juvenile had written more than ten (10) love letters to girls between January and July, 2003, while he was detained (A-45 and Tr. 125). Ms. O'Reilly explained that because of an unrelated case in which a detainee wrote letters to potential witnesses to persuade them to change their testimony, the Family Court of St. Louis County instituted a policy whereby the assigned juvenile officer reads outgoing letters from detained juveniles before mailing them (A- 44-45 and Tr. 124-125). In the instant case

involving Relator, D. C., Ms. O'Reilly did not see the juvenile write any of the love letters; instead, she received the letters through interoffice mail, read them and placed them in the mail without keeping copies of them (A-45 and Tr. 125-128). In February or March, 2003, after she received approximately six love letters to several different girls, all written in the same penmanship (A-49 and Tr. 141-143), Ms. O'Reilly asked the juvenile if the girls knew he was writing love letters to more than one girl and what would happen if they found out; the juvenile just smiled (A-49 and Tr. 143-144). Sometime thereafter, still in February or March, Ms. O'Reilly asked the juvenile if he had written the letters himself; the juvenile said that he had (A-49 and Tr. 144). When Ms. O'Reilly then complimented him on his penmanship, the juvenile agreed that he had good handwriting and stated that that was something he had worked on (A-49 and Tr. 144). The juvenile said that he had written all the letters Ms. O'Reilly mailed for him (A-49 and Tr. 144).

The Deputy Juvenile Officer further testified that no other juvenile had been in detention as long as D. C. to have helped him with all of the letters (A-52 and Tr. 155).

Based on her familiarity with the juvenile's handwriting in his letters, Ms. O'Reilly identified the handwriting at the top and through the first,

second and third paragraphs of Juvenile Officer's exhibit 1, a detention "Residents' Grievance" form as the juvenile's (A-46 and Tr. 130-131, A-50 and Tr. 146-147, A-71). On that form, the juvenile printed his name, unit, unit leader's name, date, juvenile officer's or worker's name and the shift in which the incident occurred. Where the form directed the juvenile to "describe the incident," he wrote, "I ask for a nother bottle of deodorant. Because the other kind he gave us burns everybody under arms. So he drop my level." In paragraph 2, in response to the preprinted question, "What part did you take in the above incident," the juvenile wrote "Ask for different deodorant." Paragraph 3 asked the question "Why do you feel you are being treated unfairly?" and the juvenile's handwritten answer was "That was stupid to drop my level because I ask for deodorant" (A-71). The court received Juvenile Officer's exhibit 1 in evidence (A-51 and Tr. 149). Both Ms. O'Reilly and Dr. Layton also testified that Residents' Grievance forms are required to be written by the complaining juvenile and Ms. O'Reilly only knew of one exception to that requirement in her 6 ½ years as a Deputy Juvenile Officer (A-41 and Tr. 112, A-46 and Tr. 130).

Before Ms. O'Reilly testified and identified the handwriting on Juvenile Officer's exhibit 1 as that of the juvenile, Dr. Caul agreed that the handwriting on Juvenile Officer's exhibit 1 could be the juvenile's (A-32

and Tr. 73-74) and that the juvenile's grievance form which contained handwritten sentences and four syllable words including "deodorant" was "absolutely inconsistent" with his psychological test results for the juvenile (A- 31 and Tr. 72). Dr. Layton's reaction was similar (A-42 and Tr. 115).

Both Drs. Caul and Layton testified to the juvenile's understanding of the certification proceedings and the participants in the process. The juvenile told Dr. Caul that a lawyer's job was to help him and get him out (A-25 and Tr. 48, A-29 and Tr. 64), that the judge's role was to send him away (A-25 and Tr. 48) and that the Deputy Juvenile Officer tries to help change a juvenile's life (A-26 and Tr. 49, A-30 and Tr. 67). To Dr. Layton, the juvenile expressed his understanding that the certification hearing was to determine in which court his case would be heard, that he would have a permanent record if he went to the adult system while staying in the juvenile system could give him a chance to start over (A-39 and Tr. 103-104). Dr. Layton concluded that the juvenile had a "good understanding of the nature of a certification hearing" (A-39 and Tr. 103, A-59). The juvenile also knew that he had a female attorney who would speak for him in court and that the judge would make the decision (A-40 and Tr. 107). Neither Dr. Caul nor Dr. Layton made any attempt to help the juvenile understand the certification process (A-30 and Tr. 65, A-40 and Tr. 106-107).

After taking the matter under submission, the Court entered its order on July 22, 2003, finding that the juvenile was competent to understand the certification hearing and consult with his attorney (A-72).

POINTS RELIED ON

I. RELATOR'S PETITION FOR WRIT OF PROHIBITION SHOULD BE DISMISSED BECAUSE MISSOURI SUPREME COURT RULE 84.22(a) PROSCRIBES THE ISSUANCE OF AN ORIGINAL REMEDIAL WRIT WHEN ADEQUATE RELIEF CAN BE AFFORDED BY AN APPEAL.

Missouri Supreme Court Rule 84.22(a)

In re T.J.H., 479 S.W.2d 433 (Mo. banc 1972)

State ex rel. T.J.H. v. Bills, 504 S.W.2d 76 (Mo. banc 1974)

Section 211.041, R.S.Mo.

II. RELATOR'S PETITION FOR WRIT OF PROHIBITION SHOULD BE DISMISSED BECAUSE THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN FINDING RELATOR COMPETENT TO PROCEED.

State v. Frezzell, 958 S.W.2d 101, 104 (Mo. App. 1998)

State v. Anderson, 79 S.W.3d 420, 433 (Mo. banc 2002)

State v. Johns, 34 S.W.3d 93, 104 (Mo. banc 2002)

Godinez v. Moran, 509 U.S. 389, 113 S. Ct. 2680, 125 L.Ed.2d 321 (1993)

ARGUMENT

I. RELATOR'S PETITION FOR WRIT OF PROHIBITION SHOULD BE DISMISSED BECAUSE MISSOURI SUPREME COURT RULE 84.22(a) PROSCRIBES THE ISSUANCE OF AN ORIGINAL REMEDIAL WRIT WHEN ADEQUATE RELIEF CAN BE AFFORDED BY AN APPEAL.

Missouri Supreme Court Rule 84.22(a) provides that "[n]o original remedial writ shall be issued by an appellate court in any case wherein adequate relief can be afforded by an appeal…." In In re T.J.H., 479 S.W.2d 433 (Mo. banc 1972), the Court held that although a juvenile court order relinquishing jurisdiction over a juvenile for that juvenile to be tried as an adult is not a final order for purposes of appeal, that review of such an order is available through a motion to dismiss an indictment or information and appeal of the criminal conviction. The Missouri Supreme Court specifically noted that delays caused by appellate review of certification orders would delay prosecutions in either juvenile or criminal court and jeopardize a fair disposition of the proceedings.

The only exception to the above ruling was in the case State ex rel. T.J.H. v. Bills, 504 S.W.2d 76 (Mo. banc 1974), in which the Missouri Supreme Court held that an interlocutory review by a writ of prohibition was appropriate to challenge jurisdiction of the criminal court to hear a case following certification of a juvenile to stand trial as an adult when the certification order did not contain findings required by law. "The writ of prohibition goes to the sufficiency of the order to transfer, not to its correctness." Id. At 79. In the instant case, Relator does not claim that the Family Court of St. Louis County lacked jurisdiction to hear the competency issues involved in the certification proceeding, thereby conceding that issue. Instead, Relator questions whether the trial court's judgment was supported by "substantial evidence." What Relator asserts is that the trial judge entered the wrong order based on the evidence, an issue which should properly be challenged by an appeal.

The issue in a certification proceeding is the juvenile's amenability to treatment in the juvenile system. It involves consideration of the juvenile's age, treatment needs and treatment services available to a juvenile or family court. In the instant case, delay in the proceedings in the Family Court of St. Louis County could cause the juvenile, who is already 17 ½ years old, to have no available treatment options in the juvenile system. Since the

juvenile does have an adequate remedy by way of appeal, his petition for a writ of prohibition should be denied.

The ramifications of this Honorable Court's decision in this case can be enormous. While in theory a juvenile or family court can take jurisdiction over a juvenile who comes within its jurisdiction and continue that jurisdiction until the juvenile turns twenty-one years of age pursuant to Section 211.041, R.S.Mo., the Juvenile Code does not provide any mechanism for enforcing court orders other than removing a juvenile from his home and placing him in a public or private juvenile treatment facility. Such facilities generally will not accept a juvenile who is over the age of sixteen and one-half years and the court cannot even order a juvenile to remain in placement at the Division of Youth Services beyond the age of eighteen unless the Division requests such an order. Section 219.021.1, R.S.Mo. If either an appeal or an interlocutory review of a competency or certification order is permitted to challenge issues other than jurisdiction, the practical effect will be to delay juvenile proceedings during which time a juvenile may well become too old to receive treatment in the juvenile system. In addition, appellate courts which are already overburdened may be further taxed with review of issues which may subsequently become moot in the adult criminal justice system.

II. RELATOR'S PETITION FOR WRIT OF PROHIBITION SHOULD BE DISMISSED BECAUSE THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN FINDING RELATOR COMPETENT TO PROCEED.

In two of his Points Relied On, Relator challenges the sufficiency of the evidence to support Respondent's judgment that the juvenile is competent to proceed in the underlying certification proceeding. Assuming that a writ of prohibition is a proper action in which to assert such a claim, a point Respondent does not concede, a brief review of the evidence shows that the trial court did not err.

In his brief, the juvenile correctly identifies the proper standard for review. "A trial court's determination of competency is one of fact that must stand unless there is no substantial evidence to support it…. In reviewing the sufficiency of a trial court's determination of competency, a reviewing court does not weigh the evidence but accepts as true all the evidence and reasonable inferences that tend to support the finding…. The burden is on the accused to show that he is incompetent to stand trial." State v. Frezzell, 958 S.W.2d 101, 104 (Mo. App. 1998).

"In Missouri a defendant is presumed competent, and has the burden of proving incompetence by a preponderance of the evidence." State v.

Anderson, 79 S.W.3d 420, 433 (Mo. banc 2002). A defendant is competent when he "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and has 'a rational as well as factual understanding of the proceedings against him.' " State v. Johns, 34 S.W.3d 93, 104 (Mo. banc 2002), citing and quoting Godinez v. Moran, 509 U.S. 389, 396, 113 S. Ct. 2680, 125 L.Ed.2d 321 (1993).

Having properly identified the standard for review, Relator then ignores all of the evidence which supports Respondent's finding. A brief review of the evidence shows that there was no error.

The juvenile was in the ninth grade at Beaumont High School (A-26 and Tr. 52, A-28 and Tr. 60, A-40 and Tr. 107) before he was twice committed by the St. Louis City Family Court to the Division of Youth Services for five separate law violations (A-28 and Tr. 57, A-54). Although Drs. Caul and Layton testified that the juvenile was too mentally retarded to function independently (A-17 and Tr. 15-16, A- 36-37 and Tr. 92-93), in November, 2002, the juvenile absconded from a Division of Youth Services facility and was gone for approximately a month (A-28 and Tr. 58).

Part of the evaluation process by both Dr. Caul and Dr. Layton involved asking the juvenile about his personal history. Their testimony and reports credit the juvenile with knowing that he was the fifth of five

children born to his mother (A-29 and Tr. 61, A-61), that his father is deceased (A-61), that he had been in a serious car accident when he was twelve or thirteen years old (A-29 and Tr. 61, A-61), that he had had ongoing feelings of depression (A-39 and Tr. 101), that he had tried to hang himself and had been stopped by his brother (A-39 and Tr. 101), that he had seen a doctor and was placed on Ritalin (A-39 and Tr. 101) and that the Ritalin had helped him to concentrate and feel better (A-39 and Tr. 101). Dr. Layton agreed that the historical information she elicited from the juvenile showed that his "speech was coherent and his thought process was logical" (A-38 and Tr. 100).

The juvenile had the ability to understand and follow rules in the detention center and in the psychological testing process. Dr. Layton testified that the juvenile's six minor rule violations in almost 7 months in detention showed that "he does have a fairly good understanding of the rules" (A-41 and Tr. 109) and that he had also understood the testing directions she gave him in the psychological evaluation because he followed those directions (A-39 and Tr. 103).

Although the psychological evaluations showed that the juvenile was unable to recognize or write most letters, including a "C" (A- 24-25 and Tr. 41-45, 47), placing him in the profoundly retarded range (A-24 and Tr. 41),

the juvenile was able to write his name when asked to do so by Dr. Caul (A-31 and Tr. 69); the juvenile's last name begins with the letter "C"!

Deputy Juvenile Officer Helena O'Reilly testified that the juvenile had written more than ten (10) love letters to girls between January and July, 2003, while he was detained (A-45 and Tr. 125). She received those letters through interoffice mail, read them and placed them in the mail without keeping copies of them (A-45 and Tr. 125-128). In February or March, 2003, after she received approximately six love letters to several different girls, all written in the same penmanship (A-49 and Tr. 141-143), Ms. O'Reilly asked the juvenile if the girls knew he was writing love letters to more than one girl and what would happen if they found out; the juvenile just smiled (A-49 and Tr. 143-144). Sometime thereafter, still in February or March, Ms. O'Reilly asked the juvenile if he had written the letters himself; the juvenile said that he had (A-49 and Tr. 144). When Ms. O'Reilly then complimented him on his penmanship, the juvenile agreed that he had good handwriting and stated that that was something he had worked on (A-49 and Tr. 144). The juvenile said that he had written all the letters Ms. O'Reilly mailed for him (A-49 and Tr. 144). The Deputy Juvenile Officer further testified that no other juvenile had been in detention as long as D. C. to have helped him with all of the letters (A-52 and Tr. 155).

Based on her familiarity with the juvenile's handwriting in his letters, Ms. O'Reilly identified the handwriting at the top and through the first, second and third paragraphs of Juvenile Officer's exhibit 1, a detention "Residents' Grievance" form as the juvenile's (A-46 and Tr. 130-131, A-50 and Tr. 146-147, A-71). On that form, the juvenile printed his name, unit, unit leader's name, date, juvenile officer's or worker's name and the shift in which the incident occurred. Where the form directed the juvenile to "describe the incident," he wrote, "I ask for a nother bottle of deodorant. Because the other kind he gave us burns everybody under arms. So he drop my level." In paragraph 2, in response to the preprinted question, "What part did you take in the above incident," the juvenile wrote "Ask for different deodorant." Paragraph 3 asked the question "Why do you feel you are being treated unfairly?" and the juvenile's handwritten answer was "That was stupid to drop my level because I ask for deodorant" (A-71). The court received Juvenile Officer's exhibit 1 in evidence (A-51 and Tr. 149). Both Ms. O'Reilly and Dr. Layton also testified that Residents' Grievance forms are required to be written by the complaining juvenile and Ms. O'Reilly only knew of one exception to that requirement in her 6 ½ years as a Deputy Juvenile Officer (A-41 and Tr. 112, A-46 and Tr. 130).

Before Ms. O'Reilly testified and identified the handwriting on Juvenile Officer's exhibit 1 as that of the juvenile, Dr. Caul agreed that the handwriting on Juvenile Officer's exhibit 1 could be the juvenile's (A-32 and Tr. 73-74) and that the juvenile's grievance form which contained handwritten sentences and four syllable words including "deodorant" was "absolutely inconsistent" with his psychological test results for the juvenile (A-31 and Tr. 72). Dr. Layton's reaction was similar (A-42 and Tr. 115).

Nowhere in his Petition for Writ of Prohibition, Suggestions in Support thereof or in his brief does Relator claim that the Respondent erred in receiving the juvenile's grievance form (Juvenile Officer's exhibit 1) into evidence, thereby conceding that its admission in evidence was proper.

The juvenile claims that his low I.Q. scores make him incompetent to stand trial. While that can be a factor for the trial court to consider, it has not been held to be conclusive by either the Missouri Supreme Court or the United States Supreme Court. "…[I]t is the duty of the trial court to determine which evidence is more credible and persuasive." State v. Johns, supra at 105.

Both Drs. Caul and Layton testified to the juvenile's understanding of the certification proceedings and the participants in the process. The juvenile told Dr. Caul that a lawyer's job was to help him and get him out

(A-25 and Tr. 48, A-29 and Tr. 64), that the judge's role was to send him away (A-25 and Tr. 48) and that the Deputy Juvenile Officer tries to help change a juvenile's life (A-26 and Tr. 49, A-30 and Tr. 67). To Dr. Layton, the juvenile expressed his understanding that the certification hearing was to determine in which court his case would be heard, that he would have a permanent record if he went to the adult system while staying in the juvenile system could give him a chance to start over (A-39 and Tr. 103-104). Dr. Layton concluded that the juvenile had a "good understanding of the nature of a certification hearing" (A-39 and Tr. 103, A-59). The juvenile also knew that he had a female attorney who would speak for him in court and that the judge would make the decision (A-40 and Tr. 107).

Relator implies that the trial court's entire judgment was based on observing the juvenile's attorney show and converse with the juvenile about Juvenile Officer's exhibit number 1, claiming that that observation alone is not sufficient to support the judgment. But nowhere in Respondent's order does it say that that observation was the sole basis for the order. Rather the order states "During the hearing, the court heard the evidence **and** had the opportunity to observe the juvenile (emphasis added)" (A-72). Given the testimony that Relator was in 9th grade before being committed to the Division of Youth Services, that he is able to read and write, that he can

write letters of the alphabet which he pretends he cannot identify and that he does understand the certification process, there is more than ample evidence to support the trial court's finding.

CONCLUSION

WHEREFORE, Respondent prays that this Honorable Court quash the preliminary order in prohibition and dismiss Relator's Petition for Writ of Prohibition forthwith.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing and a floppy disk containing the brief was hand delivered to the following:

Honorable Maura B. McShane, Circuit Judge, Division 2, St. Louis County Family Court, 501 South Brentwood Boulevard, Clayton, Missouri 63105

and mailed, postage prepaid, to the following:

Ms. Kristine Kerr, Attorney for Relator, Office of State Public Defender, 100 South Central Avenue, 2nd Floor, Clayton, Missouri 63105

on the 2nd day of December, 2003.

_____

CERTIFICATE OF COMPLIANCE WITH RULE 84.06(c) and (g)

Pursuant to Missouri Supreme Court Rule 84.06(c) and (g), counsel certifies that this brief complies with the limitations contained in Missouri Supreme Court Rule 84.06(b). Based upon the information provided by undersigned counsel's word processing system, Microsoft Word 2000, this brief contains 509 lines of text and 4458 words. Further, a copy of Respondent's brief on floppy disk accompanies her written brief and that disk has been scanned for viruses and is virus-free as required by Missouri Supreme Court Rule 84.06(g).

Respectfully submitted,

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